

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 1682 of 2001 (S/S)
Old no. 46032/2000

Lalit Mohan Vishwakarma Petitioner

Versus

State and others Respondent

Date of decision: 18th September, 2004
For the approval of:

Hon'ble Mr. Justice P.C. Pant

Whether the order/judgment should be sent to
the reporters for reporting? (Yes)

Whether the reporters be allowed to see the
judgment? (Yes)

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.**

WRIT PETITION NO. 1682 (S/S)/2001

Sri Lalit Mohan Vishwakarma Petitioner.
Vs.

1. State of U.P.
2. Inspector General of Police, Bareilly zone
3. Deputy Inspector General of Police, Kumaun Zone
4. Superintendent of Police, Champawat

.....Respondents.

sri Manoj Tiwari, Advocate learned counsel for petitioner
Sri U.P.S. Negi, Additional Advocate General, State of Uttaranchal for the respondents.

Hon'ble Prafulla C. Pant, J

1. By means of this writ petition, moved under article 226 of Constitution of India, the petitioner has sought quashing of impugned order dated 16.08.1999 passed by Respondent No.4, Order dated 31.01.2000 passed by Respondent No.3 and Order dated 05.08.2000 passed by Respondent No.2, regarding with-holding of integrity of the petitioner and rejection of his Appeal/Representation relating thereto.

2. Brief facts of the case as narrated in the writ petition are that the petitioner is Sub Inspector in the Civil Police of the State and has put in service for more than 17 years. In the year 1999, petitioner was posted as Station House Officer, Police Station, Banbasa, District Champawat. A vehicle of the make Tata Sume passed through area under Police Station, Banbasa in which some smuggled goods were being taken away. It was intercepted by Checking Squad. Constable Sri Sunder Lal Sharma who was with the vehicle told checking staff that persons in the vehicle are guests of the petitioner. It is also alleged against the petitioner that to hush up the incident, the petitioner contacted

two Press Reporters namely Rajesh Deweya and keshav Bhargawa asking them not to publish the news items relating to the incident. On receipt of report of this matter, a Show Cause Notice dated 04.08.1999 was issued by Superintendent of Police (Respondent No.4) to the petitioner asking him to give his reply regarding the incident. The petitioner, in his reply dated 10.08.1999 (copy of annexure 2 to writ petition) in response to the said notice, submitted that in preliminary enquiry none of the accused has disclosed if they were guests of the petitioner. The petitioner has further alleged in the writ petition that Constable Sunder Lal Sharma also did not disclose in the preliminary enquiry if the person in the intercepted vehicle were guests of the petitioner. According to the petitioner, his integrity is wrongly with-held vide order 16.08.1999 (Copy of annexure 3) passed by Respondent No.4, for the year 1999 without appreciating reply of the petitioner and the evidence of the record. The petitioner appears to have filed appeal/representation against the order of the Respondent No.4 before Deputy Inspector General of Police (Respondent No.3) who rejected the same vide his order dated 31.01.2000 (Copy annexure 5). Aggrieved by both the orders, the petitioner under Rule 23 of U.P. Police Officers Subordinate Rank (Punishment and Appeal) Rules, 1991 preferred revision before the Respondent No.2 who also rejected the same vide order dated 05.08.2000. It is alleged in the writ petition that all the authorities have passed orders on hear-say evidence. In the writ petition it is also alleged that Constable Sunder Lal Sharma who was

on worst footing as against the petitioner was exonerated while petitioner's integrity has been with-held. Hence the writ petition.

3. A Counter affidavit has been filed on behalf of the respondents in which it has been stated that the petitioner Sri Lalit Mohan Viswakarma was posted as Station Officer of Police Station, Banbasa of District Champawat on 20.06.1999. It is further stated a Tata Sumo of No. UP 25/6738 was coming from Mahendra Nagar (Nepal) to Banbassa, District Champawat (India) on the said date. On arrival of the vehicle on 20.06.1999, U.P. Border Police Inspector Mr. Affsar Abbas Zaidi checked the aforesaid vehicle, and on checking he detected that it was carrying some smuggled goods namely-3 V.C.D. one V.C.P. and 550 Foreign tube lights from Mahendra Nagar (Nepal), and four smugglers were boarding in the aforesaid vehicle, they were arrested and handed over to the custom Department Officers. It is further stated in Counter affidavit that in the said vehicle const. Sunder Lal Sharma was also found sitting along with other smugglers. The petitioner Lalit Mohan Vishwakarama, Station Officer made efforts to save constable Sunder Lal Sharm. The matter was enquired in to by the Dy. Superintendent of Police Sri Rudra Pal Singh. On enquiry, it was revealed that the station officer Sri Lalit Mohan Vishwakarma put pressure on Sri Keshav Bhargava & Rajesh Deopa Press reporters not to publish the report in their newspapers. Such act amounts misconduct and deviation of duty. A copy of the enquiry report submitted by the enquiry officer is annexed with Counter affidavit as **ANNEXURE NO.CA-1**

The petitioner was awarded an adverse Annual Remark for the year 1999 on account of suppressing the case against the accused persons. Aggrieved by the said Adverse enquiry the petitioner has filed this writ petition which according to respondents is not maintainable. With the above stories, the respondent have denied the allegations contained in the writ petition.

4. I heard learned counsel for the petitioner and learned Additional Advocate General for the respondents and perused affidavit, counter affidavit and rejoinder affidavit alongwith annexures annexed thereto.

5. The short question for consideration before this Court is that whether the petitioner's integrity has wrongly/ illegal been withheld by the respondents and have the respondents wrongly rejected the appeal/ representation of the petitioner.

6. Admittedly, the petitioner Sri Lalit Mohan Vishwakarma was posted as Station Officer at Police Station, Banbasa. It is also not denied that Police Inspector Afasar Abbas Zeddi with his team checked vehicle registration No. U.P. 25/6738 in which some smuggled goods were being taken away by some people. The entire dispute relates to the fact if the persons in the vehicle were the men protected by the petitioner or if the petitioner helped them to go scot free and attempted to hush up the story in the press.

7. Before further discussions, it is pertinent to mention here if the scope of judicial review covers the matters like the present one. No doubt, even the administrative actions are subject to the judicial scrutiny but only on the grounds like the competence of

the persons exercising the power, manner of exercising power if arbitrary or mala fide, and illegality if any in the impugned administrative action.

8. Learned counsel for the petitioner has submitted and made efforts to convince this court that the factual satisfaction of respondent No.4 is wrong. He has attacked the impugned order of respondent No.4 on the ground that it was not a speaking order. In this connection learned counsel drew my attention in lengthy reply submitted by the petitioner to respondent No.4 in response to Show Cause Notice given to him regarding the incident. It is true that while passing the impugned order dated 16.08.1999, respondent No.4 has rejected the reply of the petitioner, as not satisfactory and not disclosed the grounds at length of rejection of the reply. This Court can not ignore that the respondent No.4 was neither judicial nor quasi judicial authority. Assuming for a moment that rejection with short ground, of the reply of the petitioner was not proper on the part of respondent No.4, the detailed reasons given by the respondent No.3 while disposing of the appeal/ representation of the petitioner in his order dated 31.01.2000 (copy annexure 5) which runs into nine pages dilutes the said ground of challenge in the writ petition. The Court can not ignore following observations of the respondent No.3 in the said order (annexure 5) :-

"याची का उपरोक्त तर्क मान्य नहीं है, पत्रावली पर उपलब्ध कानि० एल०आई०यू० मोहन चन्द्र उपाध्याय, कानि० हरीश चन्द्र जोशी एवं वरिष्ठ उप निरीक्षक राकेश कुमार, चैक पोस्ट सी०पी०ओ० बनबसा के बयानों में स्पष्ट अंकित है कि दिनांक 20.06.1999 को उक्त टाटा सूमों गाडी भारत से नेपाल सीमा गयी थी, जिसमें थाना बनबसा का कानि० सुन्दर लाल शर्मा वर्दी में बैठा था, गाडी में 3 अन्य लोग बैठे थे, यह तीनों पुलिस कर्मचारी थाना बनबसा के कानि० सुन्दर लाल शर्मा

को अच्छी तरह जानते पहचानते है। गाडी में बैठे इस कानि० ने उन्हें बताया था कि गाडी में बैठे लोग थानाध्यक्ष बनबसा के मेहमान है। थाना अध्यक्ष बनबसा का मेहमान जानते हुए इन पुलिस कर्मचारियों ने इस गाडी को चेक नहीं किया। इन कर्मचारियों के बयानों से स्पष्ट है कि इस गाडी से नेपाल से तस्करी का सामान लाने के लिए कानि० सुन्दर लाल शर्मा ने जान बूझकर अभियुक्तों को थानाध्यक्ष (याची) बनबसा का मेहमान बताया था, एवं याची ने कानि० सुन्दर लाल शर्मा को बचाने का प्रयास किया है, इससे इस कार्य में थानाध्यक्ष (याची) बनबसा कि संलिप्तता स्पष्ट परिलक्षित होती है।.....”

9. The learned Additional Advocate General submitted that the persons who gave the report of incident were also Police Officers having no enmity with the petitioner. He further submitted that withholding integrity has been examined at three stages of the department and there is no illegality or element of malafide in the order passed against the petitioner. I have no reason to disagree with submission of learned Additional Advocate General.

10. In view of the above discussions, and in the facts and circumstances of the case this court is not inclined to interfere with the impugned orders challenged in the writ petition. Accordingly the writ petition is dismissed. No order as to costs.

Dated : September 18, 2004
J.K. Jain

(P.C. Pant J)